

ATTACH D -- INSTITUTIONAL
CONTROL PROGRAM DOCUMENT

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ATTACHMENT D TO THE CONSENT DECREE
INSTITUTIONAL CONTROLS PROGRAM DOCUMENT

1. **Introduction.** The purpose of this document is to list and describe the responsibilities of the Settling Defendants with respect to the implementation of the Institutional Controls Program (ICP) for Area I¹ of the Site. The ICP for the Site is generally described in the following documents: ICP Regulatory Component Document (Murray Lamont & Associates, Inc., 1993) ("ICP Regulatory Document"); An Evaluation of Institutional Controls for the Populated Areas of the Bunker Hill Superfund Site (Draft) (Panhandle Health District, 1991); the Panhandle Health District Environmental Health Code; and supporting amendments to the following documents as proposed or as ultimately adopted for the Site: the Model Subdivision Ordinance, storm water regulations, and changes to existing comprehensive plans and land use regulations. These documents clarify and refine the requirements for the ICP outlined in the Records of Decision for the Site. Although the ICP applies to the entire Site, the sole obligation of the Settling Defendants is to fund and/or implement the following eight program elements as they apply to Area I, as described below. With respect to these program elements, the Panhandle Health

¹ "Area I" means that area for which Settling Defendants have responsibility under the Consent Decree, as delineated on the Bunker Hill Superfund Site Allocation Map, Attachment C to the Consent Decree.

District (PHD) will serve as the clearinghouse for citizen requests for ICP information or services.

2. **Program Elements.** The ICP elements to be funded and/or implemented by the Settling Defendants consist of the following eight programs as they relate to Area I. Each of these elements as they relate to Area I shall be annually funded and/or implemented by the Settling Defendants until certification of all Remedial Actions. Upon certification of all Remedial Actions, each of these program elements as they relate to Area I shall be permanently funded by the Settling Defendants in accordance with the terms of section 3(d)(ii) herein.

a. **Administration.** The Settling Defendants shall fund in accordance with section 3 the administrative oversight and monitoring of the ICP, including permits and inspection programs, budgeting, sampling, enforcement, public relations, coordination with local governments, coordination of material supply programs and delivery and disposal systems, and other administrative duties required for implementation of the ICP in Area I. The Settling Defendants shall fund the reasonable costs, including attorneys' fees, of any nuisance or other actions brought by PHD to abate lead

related releases from the two following properties located outside of Area I: 1) the R.J. Partnership property, tax parcel number D-0000-006-3400; and 2) the K.I. Corporation property, tax parcel number D-0000-006-2600.

- b. **Education.** The Settling Defendants shall fund in accordance with section 3 an education program consisting of four main elements: pamphlets, brochures, multi-media information, and information enclosed with property tax and utility billings or other available delivery mechanisms.
- c. **Health Intervention.** Settling Defendants shall fund in accordance with section 3 the following elements of the Health Intervention Program: counseling, elementary education, and physician education. Blood lead screening is an important component of the Health Intervention Program; however, it will not be part of the Settling Defendants' obligations under this Consent Decree.
- d. **Interior Material supply Program.** This program will assist homeowners and residential tenants in the establishment of barriers within the home. Until the certification of all Remedial Actions, the Settling Defendants will provide HEPA vacuums, coveralls, and respirators for distribution by PHD,

and plastic sheeting and gravel for interior remodeling projects carried out in Area I in accordance with the ICP Regulatory Document upon receiving a request by the PHD. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants in accordance with section 3.

- e. **Exterior Material Supply Program.** Until certification of all Remedial Actions, Settling Defendants will provide and deliver clean top soil and crushed rock, as defined by the Residential Soils RDR, for exterior residential projects in Area I requiring no more than one cubic yard of material which are carried out in accordance with the ICP Regulatory Document. After the certification of all Remedial Actions, PHD will assume full responsibility for implementation of the program using funding provided by the Settling Defendants program in accordance with section 3. At the start of the 1994 construction season, the Settling Defendants will also make 2500 cubic yards of clean soil available to the PHD for use in implementing the ICP.

- f. **Collection Program.** Until the certification of all Remedial Actions, at the request of citizens forwarded by the PHD, the Settling Defendants will collect, store and transport up to one cubic yard of soil, tailings and/or gravel from small residential projects within Area I to a repository. After the certification of all Remedial Actions, the Settling Defendants will either continue to provide collection services or provide funding to the PHD to continue the program in accordance with section 3.
- g. **Monitoring and Repair.** The Settling Defendants will monitor and repair remediated areas as provided in the Residential Yards, Commercial Properties, and Rights-of-Way RDRs. Following the certification of completion of a Remedial Action, as defined in the SOW, the Settling Defendants shall, in accordance with section 3, fund and the PHD shall perform repairs of remediated areas in such certified areas in accordance with the ICP Regulatory Document and the Environmental Health Code.
- h. **Project Disposal and Repository.** The Settling Defendants will make a soils repository available for all projects within Area I requiring the

disposal of contaminated material which are carried out in accordance with the ICP Regulatory Document. Until certification of all Remedial Actions, the Settling Defendants will maintain and operate a repository. After certification of all Remedial Actions, the Settling Defendants will continue to provide a repository for such projects in Area I to be operated by the PHD using permanent funding as described in section 3(d)(iii).

3. **Program Funding.**

a. **Oversight Committee.**

1. **Duties.** An Oversight Committee shall be established to monitor ICP expenditures by PHD, to approve annual budgets, and to establish permanent funding as provided in section 3(d)(iii). The Oversight Committee shall not have the authority to expand the scope of the duties of the Settling Defendants under this Consent Decree, but shall have the authority to redirect resources provided by the Settling Defendants to accomplish the purposes of the ICP. The Oversight Committee shall also have authority to review the ICP in its entirety and make recommendations regarding funding

or program elements not to be provided by the Settling Defendants.

ii. **Members.** The Oversight Committee shall consist of three persons: one representative each from EPA, the Settling Defendants, and the State of Idaho. The Oversight Committee shall meet at a minimum once per quarter at the Site to carry out its duties. Disputes regarding the annual or permanent financing of the ICP related to Area I shall be resolved under the Dispute Resolution provisions of Section XX of the Consent Decree or the Memorandum of Agreement between the State of Idaho and EPA, Attachment K to the Consent Decree, as appropriate. Disputes regarding the financing of funding or activities other than those to be provided by the Settling Defendants shall be resolved according to the terms and conditions applicable to such other funding or activity.

- b. **Annual Budgets.** Each year no later than March 1, the PHD will prepare an annual budget covering the entire ICP for the following year and submit it to the Oversight Committee. The annual budget submittal will indicate, in accordance with this Attachment D, those Area I elements proposed to be funded and the level of funding by the Settling

Defendants. The first year budget shall be as provided in section (3)(d)(i). Beginning in the second year, the Oversight Committee will evaluate the proposed budget each year based on the scope of the ICP and the following factors: number of inspections to be performed; average time required for inspections; permits anticipated and work load by permit type; number of people served by the health intervention program; contacts planned in connection with the supply and collection programs; educational programs by type; relative levels of services provided between Area I and other areas of the Site; and other work unit data on which the budget is based. Data from previous years will be reviewed in evaluating the importance of various activity levels in regard to budget needs. In the event of a dispute regarding the proposed annual budget, the previous year's budget will be used until the dispute is resolved.

- c. Reporting by PHD. In order to assist with the budgeting and oversight process, the PHD shall maintain thorough accounting records of its activities in implementing the ICP, including personnel hours by type of activity (program elements), mileage, telephone logs, equipment costs

and other expenses and receipts. This information will include a breakdown of costs incurred in implementing the ICP in Area I, and shall be used to prepare monthly budget status reports comparing actual spending to budgeted amounts. Summaries thereof shall be submitted quarterly to the Oversight Committee by PHD. At the request of, and as funded by, the Settling Defendants, there shall be an annual audit of the program conducted by independent certified public accountants and directed by the Oversight Committee. In any case, accounting information regarding the ICP shall be made available to the Settling Defendants upon reasonable request.

d. **PRP Funding.**

- i) **Start-up Funding.** The PHD has proposed, and the parties have approved, a first year total start-up budget of \$224,100 plus \$28,000 in capital costs. The Settling Defendants have agreed to reimburse the entity providing the funding within sixty days of the entry of the Consent Decree for any of these budgeted start-up costs incurred and paid after the lodging of the Consent Decree but prior to its entry by the Court.

ii) **Annual Funding.** Until permanent funding is established as set forth below, the Settling Defendants shall pay only those costs actually incurred in implementing the eight ICP program elements in Area I. By July 1 of each year, the Settling Defendants shall pay the estimated budget for the first two quarters of PHD's fiscal year. By the first day of each subsequent quarter, payments shall be made such that the budgeted amounts will be reconciled each quarter thereafter with the amounts actually incurred in the preceding quarters.

iii) **Permanent Funding.** Within sixty days of certification of all Remedial Actions, the Settling Defendants shall provide permanent funding for the program elements of the ICP as they relate to Area I. The total amount of permanent funding to be provided by Settling Defendants shall be calculated, in accordance with this Attachment D, based on actual expenditure and activity level history, the then current scope and program elements of the ICP, and projected activity levels and necessary contingency amounts for the future.

The Settling Defendants' percentage of the total amount of permanent funding shall be calculated using the historical breakdown of costs prepared by the PHD pursuant to Section 3(c) above. The funds provided by the Settling Defendants shall be placed in a trust fund or similar mechanism.